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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY DAVID RICHARDS,

Defendant and Appellant.

E044335

(Super.Ct.No. RIF131424)

OPINION

APPEAL from the Superior Court of Riverside County. Craig Riemer, Judge.

Affirmed with directions.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Gil Gonzalez and Lynne G. McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.

1. Introduction

A jury convicted defendant Anthony David Richards of attempted premeditated

murder, as well as associated enhancements. The jury also found defendant guilty of the charge of actively participating in a street gang. Defendant admitted two prior offenses. The court sentenced defendant to a combined total prison sentence of 42 years—a determinate term of two years plus an indeterminate term of 40 years to life.

On appeal, defendant urges the court erred in allowing the victim, Tricia Vidales, to testify she was terminally ill. Defendant also seeks to correct the minute order and the abstract of judgment to record the judgment accurately. We reject the claim of error but order modification of the minute order and the abstract of judgment.

2. Facts

There is essentially no dispute that Vidales was shot during an encounter with defendant and another man, Raymond Ramirez. The evidence varied about whether Vidales's daughter accompanied her and other details about the temper of the encounter but we recite the facts in a style favorable to the judgment.

a. The 2001 Stabbing

In 1998 or 1999, Vidales was married to Enrique Salcedo, a Westside Riva gang leader. When Vidales was pregnant, Salcedo beat her so severely their infant son was born blind in one eye and deaf in one ear. Vidales reported the assault to the police and Salcedo went to prison for two years. A person identified as “Weasel” took over as leader of the Westside Riva gang.

In July 2001, Weasel's mother-in-law, Rosa Rios, stabbed Vidales 14 times at an apartment complex in Rubidoux. The stabbing was in retaliation for Vidales helping to

prosecute Salcedo. Raymond Ramirez, another Rios son-in-law, accompanied Vidales on the drive to the hospital. He warned Vidales not to tell the authorities about Rios.

Nevertheless, Vidales reported to the police about Rios. Rios pleaded guilty and went to prison for 10 years. When Vidales returned from the hospital, her house had been burglarized. For five years, Vidales stayed away from the Rubidoux area and had no contact with Ramirez or Westside Riva.

b. The 2006 Shooting

After midnight on July 1, 2006, Vidales visited her cousin Juan's Rubidoux apartment to invite him to a birthday party. Vidales was accompanied by five other family members and friends, including her husband, Primitivo Tello.

Vidales and her daughter found no one home at the apartment but, as they returned to their van, they were approached by Ramirez and defendant. Defendant introduced himself as "Casper" from Westside Riva. Defendant was bald with many tattoos on his head, neck, and eyelids.

The men told Vidales's daughter to walk back to the van. The two men stationed themselves on either side of Vidales, who warned them to leave her alone. When Vidales tried to enter the van, Ramirez pointed a gun at her from a distance of about three or four feet. He yelled, "I'm going to kill you, you rat bitch, you fucking snitch." Defendant exhorted Ramirez, "Shoot her. Shoot that rat bitch. Shoot her. You need to shoot her.

Ramirez shot Vidales in the chest. The bullet exited her left side and lodged on the outside of her left elbow. Vidales collapsed and defendant kicked her, spit on her,

and called her a “rat bitch.” Ramirez also spit on her and commented, “That’s what you get, you fucking rat.” The two men ran away.

The responding deputy sheriff found Vidales bleeding profusely. Vidales told the police about Ramirez and Casper from Westside Riva. She described how defendant had handed Ramirez the gun he used to shoot her. She identified both men in photographic lineups.

At trial, Vidales explained she agreed to testify because she had terminal colon cancer and she wanted to offer a good example to her children.

c. Tello’s Testimony

Vidales’s husband, Tello, was stabbed in the neck during an assault by defendant and some other inmates when Tello was in jail for a parole violation. Defendant had warned Tello about testifying in the present case. After the stabbing, defendant told Tello he “had that coming” because he was a “snitch.”

At trial, Tello testified differently than his wife. He saw Ramirez holding a gun but he did not see who shot Vidales. Earlier he had told the police Ramirez was the shooter.

3. Vidales’s Testimony

The prosecutor asked Vidales why she was testifying after she had been threatened concerning Salcedo and Rios. The court overruled defense counsel’s relevancy objection. Vidales explained: “I have cancer, so I’m dying. So I want to teach my children the right thing to do is when somebody does something to you to not be scared and let them intimidate you and get away with it. You have rights to let somebody know.

[¶] I don't want to teach my children that—that people like that intimidate them or, you, know, to let them know that when you do bad things, you go to prison. You have to pay a price, not the street way or anything like that. I'm trying to teach my children something—something else. It's very hard for me, but I can't let these guys who try to take my life in front of my children get away with it. I'm scared, but I'm tired.”

Defense counsel also inquired about Vidales's cancer during cross-examination. Later, in closing argument, the prosecutor argued that Vidales told the truth because she had “nothing to gain” and because she was dying, making her more credible.

Defendant argues Vidales's testimony was irrelevant and was highly prejudicial, rendering his trial fundamentally unfair. (*People v. Albarran* (2007) 149 Cal.App.4th 214, 229-232.) The People contend the admission of her testimony was proper.

Relevant evidence tends to prove or disprove any material disputed fact. (Evid. Code, § 210; *People v. Carter* (2005) 36 Cal.4th 1114, 1166.) Evidence on the issue of credibility of a witness is relevant. (*People v. Tidwell* (2008) 163 Cal.App.4th 1447, 1456-1457.) Furthermore, “[e]vidence of fear is relevant to the witness's credibility.” (*People v. Burgener* (2003) 29 Cal.4th 833, 869.)” (*People v. Valencia* (2008) 43 Cal.4th 268, 302.) Here the prosecutor asked Vidales why she was testifying, the obvious inference being she had good reason to be afraid in light of her history of being threatened and attacked.

As to defendant's argument that the cancer testimony unfairly appealed to the jury's sympathy, we find the contention unpersuasive. To prevail on a claim that admission of evidence violated due process, a defendant must show the jury used the

evidence improperly and the quality of the evidence necessarily prevented defendant from receiving a fair trial. (*People v. Garcia* (2008) 168 Cal.App.4th 261, 275.)

The cancer evidence was proper because it bore on the issue of Vidales's credibility. Furthermore, the evidence in this case, in spite of some disagreement and inconsistencies among the witnesses, was overwhelmingly against defendant.

Presumably the jury also followed its instructions not to be influenced by bias, sympathy, or prejudice. (CALCRIM Nos. 200 and 226; *People v. Sanchez* (2001) 26 Cal.4th 834, 852.)

4. Disposition

We affirm the judgment but we order the minute order and the abstract of judgment corrected to reflect the oral pronouncement of judgment for a determinate term of two years followed by an indeterminate term of 40 years to life. (*People v. Mesa* (1975) 14 Cal.3d 466, 471.)

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s/Gaut
Acting P.J.

We concur:

s/King
J.

s/Miller
J.